

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

DARYL ROBERTSON DDS, P.A.	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:16-cv-00222-J
	§	
CENTRAL INSURANCE COMPANIES	§	
Defendant	§	

DEFENDANT’S MOTION TO DISMISS

Defendant, Central Mutual Insurance Company (“Central”), files this Motion to Dismiss, pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiff’s claims for fraud and violations of the Insurance Code and Deceptive Trade Practices Act. In support of this motion, Central would show the following:

SUMMARY

1.

This lawsuit involves a dispute over the amount of loss sustained to Plaintiff’s property located at 101 N. McGee, Borger, Texas 79007 (hereinafter referred to as “the Property”) arising from a lightning strike which occurred on or about November 16, 2015. As demonstrated in the brief (Doc. No. 6) filed in support of this motion, Plaintiff has failed to state claims for relief for fraud, or for violations of the Texas Insurance Code or Deceptive Trade Practices Act, so that all of those claims should be dismissed pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure. An order dismissing those claims would be appropriate.

FACTUAL AND LEGAL GROUNDS FOR MOTION

2.

As allowed by the Local Rules of the Northern District of Texas, the factual and legal grounds for this motion, and the matters required by Local Rule 7.1d, are set forth in the brief (Doc. No. 6) filed by Central in support of this motion. The authorities and arguments contained in the brief (Doc. No. 6) filed in support of this motion, show this motion should be granted in its entirety.

For all of the above reasons, as well as those contained in the brief (Doc. No. 6) filed in support of this motion, Defendant, Central Mutual Insurance Company, prays that this motion be granted in its entirety, and that Plaintiff's claims for fraud, and for violations of the Texas Insurance Code and Deceptive Trade Practices Act, be dismissed, and for such other and further relief to which Central may be entitled, at law or at equity.

Respectfully submitted,

/S/Russell J. Bowman
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on October 24, 2016, I electronically filed the foregoing document with the clerk of court for the U. S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means: Leon Mitchell, Attorney for Plaintiff.

This is to certify that a true and correct copy of the foregoing instrument was served upon the following, as indicated below, on this the 24th day of October, 2016:

Mr. Leon Mitchell
MITCHELL & JONES
P. O. Drawer 707
Borger, Texas 79008-0707

VIA E-MAIL: sterlingmitchell807@gmail.com

/S/Russell J. Bowman
Russell J. Bowman